

CONTRACTOR FORWARD PRICING RATE PROPOSAL ADEQUACY CHECKLIST—Continued

Submission item	Proposal page No. (if applicable)	If not provided, explain (may use continuation pages)
11. Does the proposal identify planned or anticipated changes in the composition of labor rates, labor categories, union agreements, headcounts, or other factors that could significantly impact the direct labor rates?		
Indirect Rates (Fringe, Overhead, G&A, etc.)		
12. Indirect Rates Methodology and Basis of Each Estimate. a. Does the proposal identify the basis of each estimate and provide an explanation of the methodology used to develop the indirect rates? b. Does the proposal include or identify the location of the supporting documents for the proposed rates? 13. Does the proposal identify indirect expenses by burden center, by cost element, by year (including any voluntary deletions, if applicable) in a format that is consistent with the accounting system used to accumulate actual expenses? 14. Does the proposal identify any contingencies? 15. Does the proposal identify planned or anticipated changes in the nature, type, or level of indirect costs, including fringe benefits? 16. Does the proposal identify corporate, home office, shared services, or other incoming allocated costs and the source for those costs, including location and point of contact (custodian) name, phone number, and email address? 17. Does the proposal separately identify all intermediate cost pools and provide a reconciliation to show where the costs will be allocated? 18. Does the proposal identify the escalation factors used to escalate indirect costs for the out-years, the costs to which escalation is applicable, and the basis of each factor used? 19. Does the proposal provide details of the development of the allocation base? 20. Does the proposal include or reference the supporting data for the allocation base such as program budgets, negotiation memoranda, proposals, contract values, etc.? 21. Does the proposal identify how the proposed allocation bases reconcile with its long range plans, strategic plan, operating budgets, sales forecasts, program budgets, etc.?		
Cost of Money (COM)		
22. Cost of Money. a. Are Cost of Money rates submitted on Form CASB-CMF, with the Treasury Rate used to compute COM identified and a summary of the net book value of assets, identified as distributed and non-distributed? b. Does the proposal identify the support for the Form CASB-CMF, for example, the underlying reports and records supporting the net book value of assets contained in the form?		
Other		
23. Does the proposal include a comparison of prior forecasted costs to actual results in the same format as the proposal and an explanation/analysis of any differences? 24. If this is a revision to a previous rate proposal or a forward pricing rate agreement, does the new proposal provide a summary of the changes in the circumstances or the facts that the contractor asserts require the change to the rates?		

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DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Parts 225 and 236****RIN 0750-AI33****Defense Federal Acquisition Regulation Supplement: Use of Military Construction Funds in Countries Bordering the Arabian Sea (DFARS Case 2014-D016)****AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).**ACTION:** Final rule.

SUMMARY: DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement sections of the Military Construction and Veterans Affairs, and Related Agencies Appropriations Act, 2014, that restricts use of military construction funds in various countries, including countries bordering the Arabian Sea.

DATES: Effective December 11, 2014.

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, telephone 571-372-6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published an interim rule in the **Federal Register** at 79 FR 44314 on July 31, 2014, to implement sections of the Military Construction and Veterans Affairs, and Related Agencies Appropriations Act, 2014, that restricts use of military construction funds in various countries, including countries bordering the Arabian Sea. Since 1997, sections 111 and 112 of the annual military construction appropriations acts restrict use of military construction funds for acquisitions exceeding certain dollar thresholds of architect-engineer services and military construction to be performed in certain countries. With some exceptions, these restrictions require award to a U.S. firm or provide a preference for award to a U.S. firm.

One respondent submitted a public comment in response to the interim rule.

II. Discussion and Analysis

DoD reviewed the public comment in the development of the final rule. The comment did not result in any changes in the final rule. A discussion of the comment is provided, as follows:

Comment: The respondent disagreed with the substitution of “Arabian Sea” for the “Arabian Gulf” for the following reasons:

- The respondent viewed the rule as a “degradation of the intent of the law.”
- The respondent viewed the rule as harmful to all U.S. businesses, small and large, interested in construction projects in countries that border the Arabian Gulf, due to loss of the 20 percent preference.

The respondent suggested extension of the preferences for U.S. businesses when awarding military construction or architect-engineer contracts in countries bordering the Arabian Gulf to contracts in countries bordering the Arabian Sea.

Response: The interim rule was issued in order to comply with the law. For several years, the restrictions in the annual military construction appropriations acts have applied the use of military construction funds in countries bordering the Arabian Sea, not the Arabian Gulf. The law does not provide the option to provide the 20 percent preference to U.S. firms performing construction projects in countries that border the Arabian Gulf.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits

(including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, and is summarized as follows:

This rule is necessary to implement the preference for award only to U.S. firms when awarding certain military construction and architect-engineer contracts to be performed in countries bordering the Arabian Sea.

The objective of this rule is to implement sections 111 and 112 of the Military Construction and Veterans Affairs, and Related Agencies Appropriations Act, 2014 (Division J of Pub. L. 113–76). This rule revises the preference for award to U.S. firms of military construction contracts that have an estimated value greater than \$1,000,000 and the restriction requiring award only to U.S. firms for architect-engineer contracts that have an estimated value greater than \$500,000, to make it applicable to contracts to be performed in a country bordering the Arabian Sea, rather than a country bordering the Arabian Gulf (as required in earlier statutes).

One respondent stated that the rule would cause harm to U.S. small business entities engaged in construction projects in countries bordering the Arabian Gulf, due to loss of the 20 percent preference. There was no change made to the rule as the result of this comment, because the law no longer provides a preference for U.S. businesses (small or large) performing construction projects in countries bordering the Arabian Gulf. The law changed the applicability of the preference from military construction projects in countries bordering the Arabian Gulf to military construction projects bordering the Arabian Sea.

This will only apply to a very limited number of small entities—those entities that submit offers in response to solicitations for military construction contracts that have an estimated value greater than \$1,000,000 and architect-engineer contracts that have an estimated value greater than \$500,000,

when the contracts are to be performed in countries bordering the Arabian Sea.

There is a requirement for offerors to indicate in their offer whether they are a U.S. firm.

This rule does not impose any significant economic impact on small firms. The offeror must represent if it is a U.S. firm, but in return is granted a preference. DoD did not identify any alternatives that could reduce the burden and still meet the objectives of the rule.

V. Paperwork Reduction Act

The rule does not impose any new information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). However, it modifies the prescription for use of the provision at DFARS 252.236–7010, Overseas Military Construction—Preference for United States Firms, currently approved under OMB Clearance 0704–0255, Defense Federal Acquisition Regulation Supplement (DFARS) Part 236, Construction and Architect-Engineer Contracts, an amount of less than 8 hours. Any change in the burden hours due to the changed prescription is negligible.

List of Subjects in 48 CFR Parts 225 and 236

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR part 225 and 236, which was published at 79 FR 44314 on July 31, 2014, is adopted as a final rule without change.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

RIN 0750–A147

Defense Federal Acquisition Regulation Supplement: Elimination of Quarterly Reporting of Actual Performance Outside the United States (DFARS Case 2015–D001)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.